* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ R.P. 298/2005 in W.P.(C) No. 15759/2004

Reserved on : July 20, 2007
Delivered on : July 30, 2007

SH. G. KAR ..... Petitioner
Through : Mr. Gulab Chandra, Mr. Vishal Sinha, Advocates

versus

FOOD CORPORATION OF INDIA AND ANR. ..... Respondent/Review petitioner
Through Mr. Ajit Pudussary, Advocate for respondent/Review Petitioner.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

% Mr. Justice S. Ravindra Bhat

1. This is a review petition. It seeks recall of the order dated 31.08.2005 and restoration of W.P.(C) 15759/2004.

2. The order sought to be reviewed had directed that the amounts credited in the Provident fund account of the petitioner (respondent here) should be disbursed to him within four weeks. While doing so the Court had recorded a statement on

behalf of the review petitioner (the Food Corporation of India, which was respondent in the original writ proceeding and shall be hereafter referred to as "FCI") that the amounts along with the employer's matching contribution would be released if the employee/writ petitioner filled the prescribed proforma. The writ petitioner had sought a direction to the FCI to release the payment of Contributory Provident Fund.

3. The petitioner was an employee of the FCI. According to the averments in the writ petition, he was placed under suspension w.e.f 27.3.1991 and a case was registered under Sections 120B/420/467/471IPC and provisions of the Prevention of Corruption Act. He had challenged the departmental proceedings by filing a writ petition being No. 618/1999. That was rejected on 12.4.2004. Subsequently, the petitioner was dismissed from service.

4. The main ground upon which the present review proceedings are premised are that the petitioner along with the V.P. Hasija and others, who were working in the CPF Department of the FCI, allegedly embezzled amounts to the tune of Rs. 61 lakh by making short payment to 2004 employees and staff members of the Corporation. On the basis of this alleged mis-conduct, departmental proceedings were filed. Later, an application under Section 11 of the Criminal Law Amendment Act, 1944 was made for attachment of the properties. The application was however, rejected on 4.7.2005. The FCI also relies upon Regulation 27 of the

Regulations framed by it known as the Food Corporation of India Contributory Funds Regulations, 1967.

5. Mr. Ajit Pudussary, learned counsel for the FCI submitted that the statement made on behalf of the FCI that amount would be disbursed was without authority and that in a case of this kind there was no question of consent; even if recorded it could not bind the FCI. It was urged that in the event of the petitioner being convicted of the offences, and also the FCI succeeding in its appeal in the attachment proceedings, it would be very difficult to recover the amounts, if the direction is not reviewed.

6. Learned counsel relied upon Regulation 27(c) and submitted that the FCI would be within its rights to deduct the entire amount due to liability incurred by the member of the fund i.e. the writ petitioner.

7. Mr. Gulab Chandra, learned counsel for the respondent opposed the review petition. He contended that Regulation 27, as it stands, does not authorise forfeiture of the provident fund amounts. It is contended that the previous Regulation before amendment, permitted deduction from the provident fund of an employee, if he was dismissed from service. It was contended that on the contrary such forfeiture is impermissible in view of circular 11 of 1999 dated 2nd April, 1999 and the corrigendum issued on 1.6.1999 by the FCI. He submitted that there

is no authority to deduct contributions in the event of dismissal of an employee, as sub-clause (a) of Regulation 27(1) was deleted.

8. I have examined the materials on record and carefully considered the submissions. It is an undeniable fact that the writ petitioner was dismissed from service. This fact was disclosed by him in the writ petition. He also disclosed the pending criminal proceedings drawn against him. The petition had been pending for about a year when the basis of a statement by FCI's counsel it was disposed. At that stage, all the facts which are sought to be urged in these review proceedings were within the knowledge of the FCI. Its counter affidavit is singularly bereft of the particulars sought to be urged now. The counter affidavit was filed in February 2005. It nowhere mentioned about filing of an application under Section 11 seeking attachment of the writ petitioner's properties nor was reliance placed on Regulation 27. Equally, allegations about the writ petitioner's liabilities or outstanding payment were not urged much less averred. In these circumstances, there is no question of the FCI stating that these facts were not within its knowledge or they came to light subsequently or could not be pleaded despite exercise of due diligence.

9. The question which this court had to consider is whether sufficient grounds have been made out for recalling the main order. Undoubtedly, a counsel is expected to act within the authority given to him expressly or impliedly. In the

absence of his affidavit, or the affidavit of a responsible officer that the counsel was informed of all the facts which are now placed, before the court it would be unfair for the court to comment upon his conduct, or conclude that the statement was unauthorsied. Nevertheless, since the FCI is a statutory corporation and deals with public funds, the Court has to consider whether its submissions are otherwise feasible.

10. Regulation 27 as it originally stood, provided, by sub-clause (a) the power to effect deductions from the employer's contribution in the event of dismissal. Undisputedly, that power has now been withdrawn; that provision as re-produced in the review petition, only confers powers to deduct amounts towards liability incurred by the employee. I am of the opinion that the previous history of the provision constitutes a bar to the use of the power under Regulation 27(1)(c). If the intention was to enable FCI to completely forfeit its contribution to the employees provident fund account, in the event of dismissal, that would have been more explicit. The deletion of an express power is pointer to the fact that the Corporation consciously and deliberately withdrew that condition, i.e deduction from the fund in the event of forfeiture. The second reason why I am not persuaded to accept the ground urged is that Regulation 27(1)(c) authorises deductions in the event of liabilities incurred. The expression “liability” would mean, a determined legal liability. Apart from the fact that the writ petitioner is

facing criminal proceedings, there is no material suggesting that he owes any money or that FCI itself had determined his liabilities and quantified them in any manner known to law. It is averred that the attempt to secure his assets by seeking recourse to the Criminal Law Amendment Act were not fruitful. Therefore, even otherwise Regulation 27(1)(c) is inapplicable.

11. My conclusion is also supported from the Circular No. 11 of 1999 and a corrigendum issued in that regard where the trustees of the Provident fund of the FCI decided to, in the absence of any guidelines recording forfeiture to follow the provisions of Section 10 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Section 10 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 prescribes that amounts standing to the credit of any member of a provident fund are not in any way be liable to attachment under any decree or order of Court in respect of debt or liability incurred by him.

12. In view of the above conclusions, I am of the opinion that no ground for review has been made out. The petition is accordingly dismissed without any order as to costs.

July 30, 2007 (S. RAVINDRA BHAT)
JUDGE